

1 **UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lyle W. Hillyard**

5 House Sponsor: V. Lowry Snow

7 **LONG TITLE**

8 **General Description:**

9 This bill revises provisions of the Uniform Principal and Income Act and renames it the
10 Uniform Fiduciary Income and Principal Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ describes the duties of a fiduciary;
- 15 ▶ modifies provisions governing unitrusts;
- 16 ▶ addresses the allocation of receipts to income and principal;
- 17 ▶ addresses the allocation of disbursements from income and principal;
- 18 ▶ addresses apportionment at the beginning and end of income interest; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **75-7-103**, as enacted by Laws of Utah 2004, Chapter 89

27 ENACTS:

28 **22-3-203**, Utah Code Annotated 1953

29 **22-3-304**, Utah Code Annotated 1953

- 30 **22-3-305**, Utah Code Annotated 1953
- 31 **22-3-306**, Utah Code Annotated 1953
- 32 **22-3-307**, Utah Code Annotated 1953
- 33 **22-3-308**, Utah Code Annotated 1953
- 34 **22-3-309**, Utah Code Annotated 1953
- 35 **22-3-416**, Utah Code Annotated 1953
- 36 **22-3-507**, Utah Code Annotated 1953
- 37 **22-3-701**, Utah Code Annotated 1953
- 38 **22-3-702**, Utah Code Annotated 1953
- 39 **22-3-703**, Utah Code Annotated 1953
- 40 **22-3-801**, Utah Code Annotated 1953
- 41 **22-3-802**, Utah Code Annotated 1953
- 42 **22-3-803**, Utah Code Annotated 1953
- 43 **22-3-804**, Utah Code Annotated 1953

44 REPEALS AND REENACTS:

- 45 **22-3-101**, as enacted by Laws of Utah 2004, Chapter 285
- 46 **22-3-102**, as enacted by Laws of Utah 2004, Chapter 285
- 47 **22-3-103**, as enacted by Laws of Utah 2004, Chapter 285
- 48 **22-3-104**, as last amended by Laws of Utah 2011, Chapter 297
- 49 **22-3-201**, as enacted by Laws of Utah 2004, Chapter 285
- 50 **22-3-202**, as last amended by Laws of Utah 2011, Chapter 297
- 51 **22-3-301**, as enacted by Laws of Utah 2004, Chapter 285
- 52 **22-3-302**, as last amended by Laws of Utah 2011, Chapter 297
- 53 **22-3-303**, as last amended by Laws of Utah 2011, Chapter 297
- 54 **22-3-401**, as enacted by Laws of Utah 2004, Chapter 285
- 55 **22-3-402**, as enacted by Laws of Utah 2004, Chapter 285
- 56 **22-3-403**, as last amended by Laws of Utah 2011, Chapter 297
- 57 **22-3-404**, as enacted by Laws of Utah 2004, Chapter 285

- 58 **22-3-405**, as last amended by Laws of Utah 2011, Chapter 297
- 59 **22-3-406**, as last amended by Laws of Utah 2011, Chapter 297
- 60 **22-3-407**, as enacted by Laws of Utah 2004, Chapter 285
- 61 **22-3-408**, as enacted by Laws of Utah 2004, Chapter 285
- 62 **22-3-409**, as last amended by Laws of Utah 2009, Chapter 96
- 63 **22-3-410**, as enacted by Laws of Utah 2004, Chapter 285
- 64 **22-3-411**, as last amended by Laws of Utah 2011, Chapter 297
- 65 **22-3-412**, as enacted by Laws of Utah 2004, Chapter 285
- 66 **22-3-413**, as enacted by Laws of Utah 2004, Chapter 285
- 67 **22-3-414**, as last amended by Laws of Utah 2011, Chapter 297
- 68 **22-3-415**, as enacted by Laws of Utah 2004, Chapter 285
- 69 **22-3-501**, as enacted by Laws of Utah 2004, Chapter 285
- 70 **22-3-502**, as enacted by Laws of Utah 2004, Chapter 285
- 71 **22-3-503**, as enacted by Laws of Utah 2004, Chapter 285
- 72 **22-3-504**, as enacted by Laws of Utah 2004, Chapter 285
- 73 **22-3-505**, as last amended by Laws of Utah 2011, Chapter 297
- 74 **22-3-506**, as last amended by Laws of Utah 2011, Chapter 297
- 75 **22-3-601**, as last amended by Laws of Utah 2011, Chapter 297
- 76 **22-3-602**, as enacted by Laws of Utah 2004, Chapter 285
- 77 **REPEALS:**
- 78 **22-3-105**, as enacted by Laws of Utah 2004, Chapter 285
- 79 **22-3-106**, as enacted by Laws of Utah 2004, Chapter 285
- 80 **22-3-107**, as enacted by Laws of Utah 2004, Chapter 285
- 81 **22-3-603**, as enacted by Laws of Utah 2004, Chapter 285
- 82 **22-3-604**, as enacted by Laws of Utah 2009, Chapter 96
- 83 **22-7-101**, as enacted by Laws of Utah 2013, Chapter 244
- 84 **22-7-102**, as enacted by Laws of Utah 2013, Chapter 244
- 85 **22-7-103**, as enacted by Laws of Utah 2013, Chapter 244

- 86 [22-7-104](#), as enacted by Laws of Utah 2013, Chapter 244
- 87 [22-7-105](#), as enacted by Laws of Utah 2013, Chapter 244
- 88 [22-7-106](#), as enacted by Laws of Utah 2013, Chapter 244
- 89 [22-7-107](#), as enacted by Laws of Utah 2013, Chapter 244
- 90 [22-7-108](#), as enacted by Laws of Utah 2013, Chapter 244
- 91 [22-7-109](#), as enacted by Laws of Utah 2013, Chapter 244
- 92 [22-7-110](#), as enacted by Laws of Utah 2013, Chapter 244
- 93 [22-7-111](#), as enacted by Laws of Utah 2013, Chapter 244
- 94 [22-7-112](#), as enacted by Laws of Utah 2013, Chapter 244
- 95 [22-7-113](#), as enacted by Laws of Utah 2013, Chapter 244
- 96 [22-7-114](#), as enacted by Laws of Utah 2013, Chapter 244
- 97 [22-7-115](#), as enacted by Laws of Utah 2013, Chapter 244
- 98 [22-7-116](#), as enacted by Laws of Utah 2013, Chapter 244
- 99 [22-7-117](#), as enacted by Laws of Utah 2013, Chapter 244
- 100 [22-7-118](#), as enacted by Laws of Utah 2013, Chapter 244

102 *Be it enacted by the Legislature of the state of Utah:*

103 Section 1. Section [22-3-101](#) is repealed and reenacted to read:

104 **CHAPTER 3. UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT**

105 **Part 1. General Provisions**

106 **22-3-101. Title.**

107 This chapter is known as the "Uniform Fiduciary Income and Principal Act."

108 Section 2. Section [22-3-102](#) is repealed and reenacted to read:

109 **22-3-102. Definitions.**

110 In this chapter:

111 (1) (a) "Accounting period" means a calendar year, unless a fiduciary selects another
112 period of 12 calendar months or approximately 12 calendar months.

113 (b) "Accounting period" includes a part of a calendar year or another period of 12

114 calendar months or approximately 12 calendar months that begins when an income interest
115 begins or ends when an income interest ends.

116 (2) (a) "Asset-backed security" means a security that is serviced primarily by the cash
117 flows of a discrete pool of fixed or revolving receivables or other financial assets that by their
118 terms convert into cash within a finite time.

119 (b) "Asset-backed security" includes rights or other assets that ensure the servicing or
120 timely distribution of proceeds to the holder of the asset-backed security.

121 (c) "Asset-backed security" does not include an asset to which Section [22-3-401](#),
122 [22-3-409](#), or [22-3-414](#) applies.

123 (3) "Beneficiary" includes:

124 (a) for a trust:

125 (i) a current beneficiary, including a current income beneficiary and a beneficiary that
126 may receive only principal;

127 (ii) a remainder beneficiary; and

128 (iii) any other successor beneficiary;

129 (b) for an estate, an heir and devisee; and

130 (c) for a life estate or term interest, a person that holds a life estate, term interest, or
131 remainder, or other interest following a life estate or term interest.

132 (4) "Court" means a court of competent jurisdiction in the state.

133 (5) "Current income beneficiary" means a beneficiary to which a fiduciary may
134 distribute net income, whether the fiduciary also may distribute principal to the beneficiary.

135 (6) (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the
136 beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration
137 other than the beneficiary's right to receive the payment or transfer under the terms of the trust.

138 (b) "Distribute," "distributed," and "distributee" have corresponding meanings.

139 (7) (a) "Estate" means a decedent's estate.

140 (b) "Estate" includes the property of the decedent as the estate is originally constituted
141 and the property of the estate as it exists at any time during administration.

142 (8) "Fiduciary" includes:

143 (a) a trustee, personal representative, life tenant, holder of a term interest, and person
144 acting under a delegation from a fiduciary;

145 (b) a person that holds property for a successor beneficiary whose interest may be
146 affected by an allocation of receipts and expenditures between income and principal; and

147 (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of
148 the trust and applicable law.

149 (9) (a) "Income" means money or other property a fiduciary receives as current return
150 from principal.

151 (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a
152 principal asset to the extent provided in Part 4, Allocation of Receipts.

153 (10) (a) "Income interest" means the right of a current income beneficiary to receive all
154 or part of net income, whether the terms of the trust require the net income to be distributed or
155 authorize the net income to be distributed in the fiduciary's discretion.

156 (b) "Income interest" includes the right of a current beneficiary to use property held by
157 a fiduciary.

158 (11) "Independent person" means a person that is not:

159 (a) for a trust:

160 (i) a qualified beneficiary as determined under Section [75-7-103](#);

161 (ii) a settlor of the trust; or

162 (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a
163 distribution from the trust;

164 (b) for an estate, a beneficiary;

165 (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection
166 (11)(a) or (b);

167 (d) a corporation, partnership, limited liability company, or other entity in which
168 persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or

169 (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).

170 (12) "Mandatory income interest" means the right of a current income beneficiary to
171 receive net income that the terms of the trust require the fiduciary to distribute.

172 (13) (a) "Net income" means:

173 (i) the total allocations during an accounting period to income under the terms of a trust
174 and this chapter minus the disbursements during the period, other than distributions, allocated
175 to income under the terms of the trust and this chapter; and

176 (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount
177 determined under Part 3, Unitrust.

178 (b) "Net income" includes an adjustment from principal to income under Section
179 22-3-203.

180 (c) "Net income" does not include an adjustment from income to principal under
181 Section 22-3-203.

182 (14) "Person" means an individual, estate, trust, business or nonprofit entity, public
183 corporation, government or governmental subdivision, agency, or instrumentality, or other
184 legal entity.

185 (15) "Personal representative" means an executor, administrator, successor personal
186 representative, special administrator, or person that performs substantially the same function
187 with respect to an estate under the law governing the person's status.

188 (16) "Principal" means property held in trust for distribution to, production of income
189 for, or use by a current or successor beneficiary.

190 (17) "Record" means information that is inscribed on a tangible medium or that is
191 stored in an electronic or other medium and is retrievable in perceivable form.

192 (18) "Settlor" means the same as that term is defined in Section 75-7-103.

193 (19) "Special tax benefit" means:

194 (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the
195 Internal Revenue Code because of the qualification of an income interest in the trust as a
196 present interest in property;

197 (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the

198 Internal Revenue Code at a time the trust holds stock of an S corporation described in Section
199 1361(a)(1) of the Internal Revenue Code;

200 (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or
201 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of
202 the settlor's spouse to receive the net income of the trust;

203 (d) exemption in whole or in part of a trust from the federal generation-skipping
204 transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was
205 irrevocable on September 25, 1985, if there is any possibility that:

206 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
207 could be made from the trust; or

208 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
209 could occur with respect to the trust; or

210 (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of
211 the trust which is less than one, if there is any possibility that:

212 (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code,
213 could be made from the trust; or

214 (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code,
215 could occur with respect to the trust.

216 (20) "Successive interest" means the interest of a successor beneficiary.

217 (21) "Successor beneficiary" means a person entitled to receive income or principal or
218 to use property when an income interest or other current interest ends.

219 (22) "Terms of a trust" means:

220 (a) except as otherwise provided in Subsection (22)(b), the manifestation of the
221 settlor's intent regarding a trust's provisions as:

222 (i) expressed in the trust instrument; or

223 (ii) established by other evidence that would be admissible in a judicial proceeding;

224 (b) the trust's provisions as established, determined, or amended by:

225 (i) a trustee or trust director in accordance with applicable law;

226 (ii) court order; or
227 (iii) a nonjudicial settlement agreement under Section 75-7-110;
228 (c) for an estate, a will; or
229 (d) for a life estate or term interest, the corresponding manifestation of the rights of the
230 beneficiaries.

231 (23) (a) "Trust" includes:

232 (i) an express trust, private or charitable, with additions to the trust, wherever and
233 however created; and

234 (ii) a trust created or determined by judgment or decree under which the trust is to be
235 administered in the manner of an express trust.

236 (b) "Trust" does not include:

237 (i) a constructive trust;

238 (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial
239 arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or
240 trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,
241 pensions, retirement benefits, or employee benefits of any kind; or

242 (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.

243 (24) (a) "Trustee" means a person, other than a personal representative, that owns or
244 holds property for the benefit of a beneficiary.

245 (b) "Trustee" includes an original, additional, or successor trustee, whether appointed
246 or confirmed by a court.

247 (25) (a) "Will" means any testamentary instrument recognized by applicable law which
248 makes a legally effective disposition of an individual's property, effective at the individual's
249 death.

250 (b) "Will" includes a codicil or other amendment to a testamentary instrument.

251 Section 3. Section **22-3-103** is repealed and reenacted to read:

252 **22-3-103. Scope.**

253 Except as otherwise provided in the terms of a trust or this chapter, this chapter applies

254 to:

255 (1) a trust or estate; and

256 (2) a life estate or other term interest in which the interest of one or more persons will
257 be succeeded by the interest of one or more other persons.

258 Section 4. Section 22-3-104 is repealed and reenacted to read:

259 **22-3-104. Governing law.**

260 (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter
261 applies when this state is the principal place of administration of a trust or estate or the situs of
262 property that is not held in a trust or estate and is subject to a life estate or other term interest
263 described in Subsection 22-3-103(2).

264 (2) By accepting the trusteeship of a trust having its principal place of administration in
265 this state or by moving the principal place of administration of a trust to this state, the trustee
266 submits to the application of this chapter to any matter within the scope of this chapter
267 involving the trust.

268 Section 5. Section 22-3-201 is repealed and reenacted to read:

269 **Part 2. Fiduciary Duties and Judicial Review**

270 **22-3-201. Fiduciary duties -- General principles.**

271 (1) In making an allocation or determination or exercising discretion under this
272 chapter, a fiduciary shall:

273 (a) act in good faith, based on what is fair and reasonable to all beneficiaries;

274 (b) administer a trust or estate impartially, except to the extent the terms of the trust
275 manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

276 (c) administer the trust or estate in accordance with the terms of the trust, even if there
277 is a different provision in this chapter; and

278 (d) administer the trust or estate in accordance with this chapter, except to the extent
279 the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

280 (2) (a) A fiduciary's allocation, determination, or exercise of discretion under this
281 chapter is presumed to be fair and reasonable to all beneficiaries.

282 (b) A fiduciary may exercise a discretionary power of administration given to the
283 fiduciary by the terms of the trust, and an exercise of the power that produces a result different
284 from a result required or permitted by this chapter does not create an inference that the
285 fiduciary abused the fiduciary's discretion.

286 (3) A fiduciary shall:

287 (a) add a receipt to principal, to the extent neither the terms of the trust nor this chapter
288 allocates the receipt between income and principal; and

289 (b) charge a disbursement to principal, to the extent neither the terms of the trust nor
290 this chapter allocates the disbursement between income and principal.

291 (4) A fiduciary may exercise the power to adjust under Section 22-3-203, convert an
292 income trust to a unitrust under Subsection 22-3-303(1)(a), change the percentage or method
293 used to calculate a unitrust amount under Subsection 22-3-303(1)(b), or convert a unitrust to an
294 income trust under Subsection 22-3-303(1)(c), if the fiduciary determines the exercise of the
295 power will assist the fiduciary to administer the trust or estate impartially.

296 (5) Factors the fiduciary must consider in making the determination under Subsection
297 (4) include:

298 (a) the terms of the trust;

299 (b) the nature, distribution standards, and expected duration of the trust;

300 (c) the effect of the allocation rules, including specific adjustments between income
301 and principal, under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, Part 6,
302 Death of Individual or Termination of Income Interest, and Part 7, Apportionment at Beginning
303 and End of Income Interest;

304 (d) the desirability of liquidity and regularity of income;

305 (e) the desirability of the preservation and appreciation of principal;

306 (f) the extent to which an asset is used or may be used by a beneficiary;

307 (g) the increase or decrease in the value of principal assets, reasonably determined by
308 the fiduciary;

309 (h) whether and to what extent the terms of the trust give the fiduciary power to

310 accumulate income or invade principal or prohibit the fiduciary from accumulating income or
311 invading principal;

312 (i) the extent to which the fiduciary has accumulated income or invaded principal in
313 preceding accounting periods;

314 (j) the effect of current and reasonably expected economic conditions; and

315 (k) the reasonably expected tax consequences of the exercise of the power.

316 Section 6. Section [22-3-202](#) is repealed and reenacted to read:

317 **22-3-202. Judicial review of exercise of discretionary power -- Request for**
318 **instruction.**

319 (1) In this section, "fiduciary decision" means:

320 (a) a fiduciary's allocation between income and principal or other determination
321 regarding income and principal required or authorized by the terms of the trust or this chapter;

322 (b) the fiduciary's exercise or nonexercise of a discretionary power regarding income
323 and principal granted by the terms of the trust or this chapter, including the power to adjust
324 under Section [22-3-203](#), convert an income trust to a unitrust under Subsection [22-3-303\(1\)\(a\)](#),
325 change the percentage or method used to calculate a unitrust amount under Subsection
326 [22-3-303\(1\)\(b\)](#), or convert a unitrust to an income trust under Subsection [22-3-303\(1\)\(c\)](#); or

327 (c) the fiduciary's implementation of a decision described in Subsection (1)(a) or (b).

328 (2) The court may not order a fiduciary to change a fiduciary decision unless the court
329 determines that the fiduciary decision was an abuse of the fiduciary's discretion.

330 (3) (a) If the court determines that a fiduciary decision was an abuse of the fiduciary's
331 discretion, the court may order a remedy authorized by law, including a remedy authorized in
332 Section [75-7-1001](#).

333 (b) To place the beneficiaries in the positions the beneficiaries would have occupied if
334 there had not been an abuse of the fiduciary's discretion, the court may order:

335 (i) the fiduciary to exercise or refrain from exercising the power to adjust under Section
336 [22-3-203](#);

337 (ii) the fiduciary to exercise or refrain from exercising the power to convert an income

338 trust to a unitrust under Subsection 22-3-303(1)(a), change the percentage or method used to
339 calculate a unitrust amount under Subsection 22-3-303(1)(b), or convert a unitrust to an income
340 trust under Subsection 22-3-303(1)(c);

341 (iii) the fiduciary to distribute an amount to a beneficiary;

342 (iv) a beneficiary to return some or all of a distribution; or

343 (v) the fiduciary to withhold an amount from one or more future distributions to a
344 beneficiary.

345 (4) (a) On petition by a fiduciary for instruction, the court may determine whether a
346 proposed fiduciary decision will result in an abuse of the fiduciary's discretion.

347 (b) A beneficiary that opposes the proposed decision has the burden to establish that
348 the proposed decision will result in an abuse of the fiduciary's discretion if the petition:

349 (i) describes the proposed decision;

350 (ii) contains sufficient information to inform the beneficiary of the reasons for making
351 the proposed decision and the facts on which the fiduciary relies; and

352 (iii) explains how the beneficiary will be affected by the proposed decision.

353 Section 7. Section 22-3-203 is enacted to read:

354 **22-3-203. Fiduciary's power to adjust.**

355 (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a
356 record, without court approval, may adjust between income and principal if the fiduciary
357 determines the exercise of the power to adjust will assist the fiduciary to administer the trust or
358 estate impartially.

359 (2) This section does not create a duty to exercise or consider the power to adjust under
360 Subsection (1) or to inform a beneficiary about the applicability of this section.

361 (3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under
362 Subsection (1) is not liable to a person affected by the exercise or failure to exercise.

363 (4) In deciding whether and to what extent to exercise the power to adjust under
364 Subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including
365 relevant factors in Subsection 22-3-201(5) and the application of Subsection 22-3-401(9),

366 Section 22-3-408, and Section 22-3-413.

367 (5) A fiduciary may not exercise the power under Subsection (1) to make an
368 adjustment or under Section 22-3-408 to make a determination that an allocation is
369 insubstantial if:

370 (a) the adjustment or determination would reduce the amount payable to a current
371 income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the
372 adjustment is made to provide for a reasonable apportionment of the total return of the trust
373 between the current income beneficiary and successor beneficiaries;

374 (b) the adjustment or determination would change the amount payable to a beneficiary,
375 as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

376 (c) the adjustment or determination would reduce an amount that is permanently set
377 aside for a charitable purpose under the terms of the trust, unless both income and principal are
378 set aside for the charitable purpose;

379 (d) possessing or exercising the power would cause a person to be treated as the owner
380 of all or part of the trust for federal income tax purposes;

381 (e) possessing or exercising the power would cause all or part of the value of the trust
382 assets to be included in the gross estate of an individual for federal estate tax purposes;

383 (f) possessing or exercising the power would cause an individual to be treated as
384 making a gift for federal gift tax purposes;

385 (g) the fiduciary is not an independent person;

386 (h) the trust is irrevocable and provides for income to be paid to the settlor and
387 possessing or exercising the power would cause the adjusted principal or income to be
388 considered an available resource or available income under a public-benefit program; or

389 (i) the trust is a unitrust under Part 3, Unitrust.

390 (6) If Subsection (5)(d), (e), (f), or (g) applies to a fiduciary:

391 (a) a co-fiduciary to which Subsections (5)(d) through (g) do not apply may exercise
392 the power to adjust, unless the exercise of the power by the remaining co-fiduciary or
393 co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

394 (b) if there is no co-fiduciary to which Subsections (5)(d) through (g) do not apply, the
395 fiduciary may appoint a co-fiduciary to which Subsections (5)(d) through (g) do not apply,
396 which may be a special fiduciary with limited powers, and the appointed co-fiduciary may
397 exercise the power to adjust under Subsection (1), unless the appointment of a co-fiduciary or
398 the exercise of the power by a co-fiduciary is not permitted by the terms of the trust or law
399 other than this chapter.

400 (7) A fiduciary may release or delegate to a co-fiduciary the power to adjust under
401 Subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the
402 power will or may:

403 (a) cause a result described in Subsections (5)(a) through (f) or (h); or

404 (b) deprive the trust of a tax benefit or impose a tax burden not described in
405 Subsections (5)(a) through (f).

406 (8) A fiduciary's release or delegation to a co-fiduciary under Subsection (7) of the
407 power to adjust under Subsection (1):

408 (a) must be in a record;

409 (b) applies to the entire power, unless the release or delegation provides a limitation,
410 which may be a limitation to the power to adjust:

411 (i) from income to principal;

412 (ii) from principal to income;

413 (iii) for specified property; or

414 (iv) in specified circumstances;

415 (c) for a delegation, may be modified by a redelegation under this subsection by the
416 co-fiduciary to which the delegation is made; and

417 (d) subject to Subsection (8)(c), is permanent, unless the release or delegation provides
418 a specified period, including a period measured by the life of an individual or the lives of more
419 than one individual.

420 (9) Terms of a trust which deny or limit the power to adjust between income and
421 principal do not affect the application of this section, unless the terms of the trust expressly

422 deny or limit the power to adjust under Subsection (1).

423 (10) The exercise of the power to adjust under Subsection (1) in any accounting period
424 may apply to the current period, the immediately preceding period, and one or more subsequent
425 periods.

426 (11) A description of the exercise of the power to adjust under Subsection (1) must be:

427 (a) included in a report, if any, sent to beneficiaries under Subsection [75-7-811](#)(3); or

428 (b) communicated at least annually to the qualified beneficiaries determined under

429 Subsection [75-7-103](#)(1)(h).

430 Section 8. Section [22-3-301](#) is repealed and reenacted to read:

431 **Part 3. Unitrust**

432 **22-3-301. Definitions.**

433 In this part:

434 (1) "Applicable value" means the amount of the net fair market value of a trust taken
435 into account under Section [22-3-307](#).

436 (2) "Express unitrust" means a trust for which, under the terms of the trust without
437 regard to this part, income or net income must or may be calculated as a unitrust amount.

438 (3) "Income trust" means a trust that is not a unitrust.

439 (4) "Net fair market value of a trust" means the fair market value of the assets of the
440 trust, less the noncontingent liabilities of the trust.

441 (5) (a) "Unitrust" means a trust for which net income is a unitrust amount.

442 (b) "Unitrust" includes an express unitrust.

443 (6) "Unitrust amount" means:

444 (a) an amount computed by multiplying a determined value of a trust by a determined
445 percentage; and

446 (b) for a unitrust administered under a unitrust policy, the applicable value, multiplied
447 by the unitrust rate.

448 (7) "Unitrust policy" means a policy described in Sections [22-3-305](#) through [22-3-309](#)
449 and adopted under Section [22-3-303](#).

- 450 (8) "Unitrust rate" means the rate used to compute the unitrust amount under
451 Subsection (6) for a unitrust administered under a unitrust policy.
- 452 Section 9. Section **22-3-302** is repealed and reenacted to read:
- 453 **22-3-302. Application -- Duties and remedies.**
- 454 (1) Except as otherwise provided in Subsection (2), this part applies to:
- 455 (a) an income trust, unless the terms of the trust expressly prohibit use of this part by a
456 specific reference to this part or an explicit expression of intent that net income not be
457 calculated as a unitrust amount; and
- 458 (b) an express unitrust, except to the extent the terms of the trust explicitly:
- 459 (i) prohibit use of this part by a specific reference to this part;
460 (ii) prohibit conversion to an income trust; or
461 (iii) limit changes to the method of calculating the unitrust amount.
- 462 (2) This part does not apply to a trust described in Section 170(f)(2)(B), 642(c)(5),
463 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code.
- 464 (3) (a) An income trust to which this part applies under Subsection (1)(a) may be
465 converted to a unitrust under this part regardless of the terms of the trust concerning
466 distributions.
- 467 (b) Conversion to a unitrust under this part does not affect other terms of the trust
468 concerning distributions of income or principal.
- 469 (4) (a) This part applies to an estate only to the extent a trust is a beneficiary of the
470 estate.
- 471 (b) To the extent of the trust's interest in the estate, the estate may be administered as a
472 unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or
473 method used to calculate the unitrust amount may be changed, in the same manner as for a trust
474 under this part.
- 475 (5) This part does not create a duty to take or consider action under this part or to
476 inform a beneficiary about the applicability of this part.
- 477 (6) A fiduciary that in good faith takes or fails to take an action under this part is not

478 liable to a person affected by the action or inaction.

479 Section 10. Section [22-3-303](#) is repealed and reenacted to read:

480 **22-3-303. Authority of fiduciary.**

481 (1) A fiduciary, without court approval, by complying with Subsections (2) and (6),

482 may:

483 (a) convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust
484 policy for the trust providing:

485 (i) that in administering the trust the net income of the trust will be a unitrust amount
486 rather than net income determined without regard to this part; and

487 (ii) the percentage and method used to calculate the unitrust amount;

488 (b) change the percentage or method used to calculate a unitrust amount for a unitrust
489 if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a
490 unitrust policy providing changes in the percentage or method used to calculate the unitrust
491 amount; or

492 (c) convert a unitrust to an income trust if the fiduciary adopts in a record a
493 determination that, in administering the trust, the net income of the trust will be net income
494 determined without regard to this part rather than a unitrust amount.

495 (2) A fiduciary may take an action under Subsection (1) if:

496 (a) the fiduciary determines that the action will assist the fiduciary to administer a trust
497 impartially;

498 (b) the fiduciary sends a notice in a record, in the manner required by Section
499 [22-3-304](#), describing and proposing to take the action;

500 (c) the fiduciary sends a copy of the notice under Subsection (2)(b) to each settlor of
501 the trust which is:

502 (i) if an individual, living; or

503 (ii) if not an individual, in existence;

504 (d) at least one member of each class of the qualified beneficiaries determined under
505 Subsection [75-7-103](#)(1)(h) receiving the notice under Subsection (2)(b) is:

506 (i) if an individual, legally competent;
507 (ii) if not an individual, in existence; or
508 (iii) represented in the manner provided in Subsection 22-3-304(2); and
509 (e) the fiduciary does not receive, by the date specified in the notice under Subsection
510 22-3-304(4)(e), an objection in a record to the action proposed under Subsection (2)(b) from a
511 person to which the notice under Subsection (2)(b) is sent.

512 (3) (a) If a fiduciary receives, not later than the date stated in the notice under
513 Subsection 22-3-304(4)(e), an objection in a record described in Subsection 22-3-304(4)(d) to a
514 proposed action, the fiduciary or a beneficiary may request the court to have the proposed
515 action taken as proposed, taken with modifications, or prevented.

516 (b) A person described in Subsection 22-3-304(1) may oppose the proposed action in
517 the proceeding under this subsection, whether the person:

518 (i) consented under Subsection 22-3-304(3); or
519 (ii) objected under Subsection 22-3-304(4)(d).

520 (4) If, after sending a notice under Subsection (2)(b), a fiduciary decides not to take the
521 action proposed in the notice, the fiduciary shall notify in a record each person described in
522 Subsection 22-3-304(1) of the decision not to take the action and the reasons for the decision.

523 (5) If a beneficiary requests in a record that a fiduciary take an action described in
524 Subsection (1) and the fiduciary declines to act or does not act within 90 days after receiving
525 the request, the beneficiary may request the court to direct the fiduciary to take the action
526 requested.

527 (6) In deciding whether and how to take an action authorized by Subsection (1), or
528 whether and how to respond to a request by a beneficiary under Subsection (5), a fiduciary
529 shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in
530 Subsection 22-3-201(5).

531 (7) A fiduciary may release or delegate the power to convert an income trust to a
532 unitrust under Subsection (1)(a), change the percentage or method used to calculate a unitrust
533 amount under Subsection (1)(b), or convert a unitrust to an income trust under Subsection

534 (1)(c), for a reason described in Subsection 22-3-203(7) and in the manner described in
535 Subsection 22-3-203(8).

536 Section 11. Section 22-3-304 is enacted to read:

537 **22-3-304. Notice.**

538 (1) A notice required by Subsection 22-3-303(2)(b) must be sent in a manner
539 authorized under Section 75-7-109 to:

540 (a) the qualified beneficiaries determined under Subsection 75-7-103(1)(h); and

541 (b) each person that is granted a power over the trust by the terms of the trust, to the
542 extent the power is exercisable when the person is not then serving as a trustee:

543 (i) including a:

544 (A) power over the investment, management, or distribution of trust property or other
545 matters of trust administration; and

546 (B) power to appoint or remove a trustee or person described in this subsection; and

547 (ii) excluding a:

548 (A) power of appointment;

549 (B) power of a beneficiary over the trust, to the extent the exercise or nonexercise of
550 the power affects the beneficial interest of the beneficiary or another beneficiary represented by
551 the beneficiary under Sections 75-7-301 through 75-7-305 with respect to the exercise or
552 nonexercise of the power; and

553 (C) power over the trust if the terms of the trust provide that the power is held in a
554 nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax
555 objective under the Internal Revenue Code.

556 (2) The representation provisions of Sections 75-7-301 through 75-7-305 apply to
557 notice under this section.

558 (3) (a) A person may consent in a record at any time to action proposed under
559 Subsection 22-3-303(2)(b).

560 (b) A notice required by Subsection 22-3-303(2)(b) need not be sent to a person that
561 consents under this subsection.

- 562 (4) A notice required by Subsection 22-3-303(2)(b) must include:
- 563 (a) the action proposed under Subsection 22-3-303(2)(b);
- 564 (b) for a conversion of an income trust to a unitrust, a copy of the unitrust policy
- 565 adopted under Subsection 22-3-303(1)(a);
- 566 (c) for a change in the percentage or method used to calculate the unitrust amount, a
- 567 copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under
- 568 Subsection 22-3-303(1)(b);
- 569 (d) a statement that the person to which the notice is sent may object to the proposed
- 570 action by stating in a record the basis for the objection and sending or delivering the record to
- 571 the fiduciary;
- 572 (e) the date by which an objection under Subsection (4)(d) must be received by the
- 573 fiduciary, which must be at least 30 days after the date the notice is sent;
- 574 (f) the date on which the action is proposed to be taken and the date on which the
- 575 action is proposed to take effect;
- 576 (g) the name and contact information of the fiduciary; and
- 577 (h) the name and contact information of a person that may be contacted for additional
- 578 information.

579 Section 12. Section **22-3-305** is enacted to read:

580 **22-3-305. Unitrust policy.**

581 (1) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy

582 adopted under Subsection 22-3-303(1)(a) or (b) or amended or replaced under Subsection

583 22-3-303(1)(b).

584 (2) A unitrust policy must provide:

- 585 (a) the unitrust rate or the method for determining the unitrust rate under Section
- 586 22-3-306;
- 587 (b) the method for determining the applicable value under Section 22-3-307; and
- 588 (c) the rules described in Sections 22-3-306 through 22-3-309 which apply in the
- 589 administration of the unitrust, whether the rules are:

590 (i) mandatory, as provided in Subsections 22-3-307(1) and 22-3-308(1); or
591 (ii) optional, as provided in Section 22-3-306 and Subsections 22-3-307(2),
592 22-3-308(2), and 22-3-309(1), to the extent the fiduciary elects to adopt those rules.

593 Section 13. Section **22-3-306** is enacted to read:

594 **22-3-306. Unitrust rate.**

595 (1) Except as otherwise provided in Subsection 22-3-309(2)(a), a unitrust rate may be:

596 (a) a fixed unitrust rate; or

597 (b) a unitrust rate that is determined for each period using:

598 (i) a market index or other published data; or

599 (ii) a mathematical blend of market indices or other published data over a stated
600 number of preceding periods.

601 (2) Except as otherwise provided in Subsection 22-3-309(2)(a), a unitrust policy may
602 provide:

603 (a) a limit on how high the unitrust rate determined under Subsection (1)(b) may rise;

604 (b) a limit on how low the unitrust rate determined under Subsection (1)(b) may fall;

605 (c) a limit on how much the unitrust rate determined under Subsection (1)(b) may
606 increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates
607 over a stated number of preceding periods;

608 (d) a limit on how much the unitrust rate determined under Subsection (1)(b) may
609 decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust
610 rates over a stated number of preceding periods; or

611 (e) a mathematical blend of any of the unitrust rates determined under Subsection
612 (1)(b) and Subsections (2)(a) through (d).

613 Section 14. Section **22-3-307** is enacted to read:

614 **22-3-307. Applicable value.**

615 (1) A unitrust policy must provide the method for determining the fair market value of
616 an asset for the purpose of determining the unitrust amount, including:

617 (a) the frequency of valuing the asset, which need not require a valuation in every

618 period; and
619 (b) the date for valuing the asset in each period in which the asset is valued.
620 (2) Except as otherwise provided in Subsection 22-3-309(2)(b), a unitrust policy may
621 provide methods for determining the amount of the net fair market value of the trust to take
622 into account in determining the applicable value, including:
623 (a) obtaining an appraisal of an asset for which fair market value is not readily
624 available;
625 (b) exclusion of specific assets or groups or types of assets;
626 (c) other exceptions or modifications of the treatment of specific assets or groups or
627 types of assets;
628 (d) identification and treatment of cash or property held for distribution;
629 (e) use of:
630 (i) an average of fair market values over a stated number of preceding periods; or
631 (ii) another mathematical blend of fair market values over a stated number of preceding
632 periods;
633 (f) a limit on how much the applicable value of all assets, groups of assets, or
634 individual assets may increase over:
635 (i) the corresponding applicable value for the preceding period; or
636 (ii) a mathematical blend of applicable values over a stated number of preceding
637 periods;
638 (g) a limit on how much the applicable value of all assets, groups of assets, or
639 individual assets may decrease below:
640 (i) the corresponding applicable value for the preceding period; or
641 (ii) a mathematical blend of applicable values over a stated number of preceding
642 periods;
643 (h) the treatment of accrued income and other features of an asset which affect value;
644 and
645 (i) determining the liabilities of the trust, including treatment of liabilities to conform

646 with the treatment of assets under Subsections (2)(a) through (h).

647 Section 15. Section **22-3-308** is enacted to read:

648 **22-3-308. Period.**

649 (1) (a) A unitrust policy must provide the period used under Sections [22-3-306](#) and
650 [22-3-307](#).

651 (b) Except as otherwise provided in Subsection [22-3-309\(2\)\(c\)](#), the period may be:

652 (i) a calendar year;

653 (ii) a 12-month period other than a calendar year;

654 (iii) a calendar quarter;

655 (iv) a three-month period other than a calendar quarter; or

656 (v) another period.

657 (2) Except as otherwise provided in Subsection [22-3-309\(2\)](#), a unitrust policy may
658 provide standards for:

659 (a) using fewer preceding periods under Subsection [22-3-306\(1\)\(b\)\(ii\)](#), (2)(c), or (2)(d)

660 if:

661 (i) the trust was not in existence in a preceding period; or

662 (ii) market indices or other published data are not available for a preceding period;

663 (b) using fewer preceding periods under Subsection [22-3-307\(2\)\(e\)\(i\)](#) or (ii), (f)(ii), or

664 (g)(ii) if:

665 (i) the trust was not in existence in a preceding period; or

666 (ii) fair market values are not available for a preceding period; and

667 (c) prorating the unitrust amount on a daily basis for a part of a period in which the

668 trust or the administration of the trust as a unitrust or the interest of any beneficiary commences

669 or terminates.

670 Section 16. Section **22-3-309** is enacted to read:

671 **22-3-309. Special tax benefits -- Other rules.**

672 (1) A unitrust policy may:

673 (a) provide methods and standards for:

- 674 (i) determining the timing of distributions;
675 (ii) making distributions in cash or in kind or partly in cash and partly in kind; or
676 (iii) correcting an underpayment or overpayment to a beneficiary based on the unitrust
677 amount if there is an error in calculating the unitrust amount;
678 (b) specify sources and the order of sources, including categories of income for federal
679 income tax purposes, from which distributions of a unitrust amount are paid; or
680 (c) provide other standards and rules the fiduciary determines serve the interests of the
681 beneficiaries.
682 (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent
683 person:
684 (a) the unitrust rate established under Section 22-3-306 may not be less than 3% or
685 more than 5%;
686 (b) the only provisions of Section 22-3-307 which apply are Subsections 22-3-307(1)
687 and (2)(a), (d), (e)(i), and (i);
688 (c) the only period that may be used under Section 22-3-308 is a calendar year under
689 Subsection 22-3-308(1); and
690 (d) the only other provisions of Section 22-3-308 that apply are Subsection
691 22-3-308(2)(b)(i) and (c).

692 Section 17. Section 22-3-401 is repealed and reenacted to read:

693 **Part 4. Allocation of Receipts**

694 **22-3-401. Receipts from entity -- Character of receipts from entity.**

- 695 (1) In this section:
696 (a) "Capital distribution" means an entity distribution of money which is a:
697 (i) return of capital; or
698 (ii) distribution in total or partial liquidation of the entity.
699 (b) (i) "Entity" means a corporation, partnership, limited liability company, regulated
700 investment company, real estate investment trust, common trust fund, or any other organization
701 or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a

702 taxpayer for federal income tax purposes.

703 (ii) "Entity" does not include:

704 (A) a trust or estate to which Section 22-3-402 applies;

705 (B) a business or other activity to which Section 22-3-403 applies that is not conducted
706 by an entity described in Subsection (1)(b)(i);

707 (C) an asset-backed security; or

708 (D) an instrument or arrangement to which Section 22-3-416 applies.

709 (c) "Entity distribution" means a payment or transfer by an entity made to a person in
710 the person's capacity as an owner or holder of an interest in the entity.

711 (2) In this section, an attribute or action of an entity includes an attribute or action of
712 any other entity in which the entity owns or holds an interest, including an interest owned or
713 held indirectly through another entity.

714 (3) Except as otherwise provided in Subsections (4)(b) through (d), a fiduciary shall
715 allocate to income:

716 (a) money received in an entity distribution; and

717 (b) tangible personal property of nominal value received from the entity.

718 (4) A fiduciary shall allocate to principal:

719 (a) property received in an entity distribution which is not:

720 (i) money; or

721 (ii) tangible personal property of nominal value;

722 (b) money received in an entity distribution in an exchange for part or all of the
723 fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's
724 interest in the entity relative to the interests of other persons that own or hold interests in the
725 entity;

726 (c) money received in an entity distribution that the fiduciary determines or estimates is
727 a capital distribution; and

728 (d) money received in an entity distribution from an entity that is:

729 (i) a regulated investment company or real estate investment trust if the money

730 received is a capital gain dividend for federal income tax purposes; or

731 (ii) treated for federal income tax purposes comparably to the treatment described in
732 Subsection (4)(d)(i).

733 (5) A fiduciary may determine or estimate that money received in an entity distribution
734 is a capital distribution:

735 (a) by relying without inquiry or investigation on a characterization of the entity
736 distribution provided by or on behalf of the entity, unless the fiduciary:

737 (i) determines, on the basis of information known to the fiduciary, that the
738 characterization is or may be incorrect; or

739 (ii) owns or holds more than 50% of the voting interest in the entity;

740 (b) by determining or estimating, on the basis of information known to the fiduciary or
741 provided to the fiduciary by or on behalf of the entity, that the total amount of money and
742 property received by the fiduciary in the entity distribution or a series of related entity
743 distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in
744 the entity; or

745 (c) if neither Subsection (5)(a) nor (b) applies, by considering the factors in Subsection
746 (6) and the information known to the fiduciary or provided to the fiduciary by or on behalf of
747 the entity.

748 (6) In making a determination or estimate under Subsection (5)(c), a fiduciary may
749 consider:

750 (a) a characterization of an entity distribution provided by or on behalf of the entity;

751 (b) the amount of money or property received in:

752 (i) the entity distribution; or

753 (ii) what the fiduciary determines is or will be a series of related entity distributions;

754 (c) the amount described in Subsection (6)(b) compared to the amount the fiduciary
755 determines or estimates is, during the current or preceding accounting periods:

756 (i) the entity's operating income;

757 (ii) the proceeds of the entity's sale or other disposition of:

- 758 (A) all or part of the business or other activity conducted by the entity;
759 (B) one or more business assets that are not sold to customers in the ordinary course of
760 the business or other activity conducted by the entity; or
761 (C) one or more assets other than business assets, unless the entity's primary activity is
762 to invest in assets to realize gain on the disposition of all or some of the assets;
763 (iii) if the entity's primary activity is to invest in assets to realize gain on the disposition
764 of all or some of the assets, the gain realized on the disposition;
765 (iv) the entity's regular, periodic entity distributions;
766 (v) the amount of money the entity has accumulated;
767 (vi) the amount of money the entity has borrowed;
768 (vii) the amount of money the entity has received from the sources described in
769 Sections [22-3-407](#), [22-3-410](#), [22-3-411](#), and [22-3-412](#); and
770 (viii) the amount of money the entity has received from a source not otherwise
771 described in this subsection; and
772 (d) any other factor the fiduciary determines is relevant.
773 (7) If, after applying Subsections (3) through (6), a fiduciary determines that a part of
774 an entity distribution is a capital distribution but is in doubt about the amount of the entity
775 distribution which is a capital distribution, the fiduciary shall allocate to principal the amount
776 of the entity distribution which is in doubt.
777 (8) If a fiduciary receives additional information about the application of this section to
778 an entity distribution before the fiduciary has paid part of the entity distribution to a
779 beneficiary, the fiduciary may consider the additional information before making the payment
780 to the beneficiary and may change a decision to make the payment to the beneficiary.
781 (9) If a fiduciary receives additional information about the application of this section to
782 an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary,
783 the fiduciary is not required to change or recover the payment to the beneficiary but may
784 consider that information in determining whether to exercise the power to adjust under Section
785 [22-3-203](#).

786 Section 18. Section [22-3-402](#) is repealed and reenacted to read:

787 **22-3-402. Receipts from entity -- Distribution from trust or estate.**

788 (1) A fiduciary shall allocate to income an amount received as a distribution of income,
789 including a unitrust distribution under Part 3, Unitrust, from a trust or estate in which the
790 fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an
791 investment entity, and shall allocate to principal an amount received as a distribution of
792 principal from the trust or estate.

793 (2) If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an
794 investment entity, Section [22-3-401](#), [22-3-415](#), or [22-3-416](#) applies to a receipt from the trust.

795 Section 19. Section [22-3-403](#) is repealed and reenacted to read:

796 **22-3-403. Receipts from entity -- Business or other activity conducted by**
797 **fiduciary.**

798 (1) This section applies to a business or other activity conducted by a fiduciary if the
799 fiduciary determines that it is in the interests of the beneficiaries to account separately for the
800 business or other activity instead of:

801 (a) accounting for the business or other activity as part of the fiduciary's general
802 accounting records; or

803 (b) conducting the business or other activity through an entity described in Subsection
804 [22-3-401\(1\)\(b\)\(i\)](#).

805 (2) A fiduciary may account separately under this section for the transactions of a
806 business or other activity, whether or not assets of the business or other activity are segregated
807 from other assets held by the fiduciary.

808 (3) A fiduciary that accounts separately under this section for a business or other
809 activity:

810 (a) may determine:

811 (i) the extent to which the net cash receipts of the business or other activity must be
812 retained for:

813 (A) working capital;

- 814 (B) the acquisition or replacement of fixed assets; and
815 (C) other reasonably foreseeable needs of the business or other activity; and
816 (ii) the extent to which the remaining net cash receipts are accounted for as principal or
817 income in the fiduciary's general accounting records for the trust;
818 (b) may make a determination under Subsection (3)(a) separately and differently from
819 the fiduciary's decisions concerning distributions of income or principal; and
820 (c) shall account for the net amount received from the sale of an asset of the business
821 or other activity, other than a sale in the ordinary course of the business or other activity, as
822 principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary
823 determines that the net amount received is no longer required in the conduct of the business or
824 other activity.
- 825 (4) Activities for which a fiduciary may account separately under this section include:
826 (a) retail, manufacturing, service, and other traditional business activities;
827 (b) farming;
828 (c) raising and selling livestock and other animals;
829 (d) managing rental properties;
830 (e) extracting minerals, water, and other natural resources;
831 (f) growing and cutting timber;
832 (g) an activity to which Section 22-3-414, 22-3-415, or 22-3-416 applies; and
833 (h) any other business conducted by the fiduciary.
- 834 Section 20. Section 22-3-404 is repealed and reenacted to read:
835 **22-3-404. Receipts not normally apportioned -- Principal receipts.**
836 A fiduciary shall allocate to principal:
837 (1) to the extent not allocated to income under this chapter, an asset received from:
838 (a) an individual during the individual's lifetime;
839 (b) an estate;
840 (c) a trust on termination of an income interest; or
841 (d) a payor under a contract naming the fiduciary as beneficiary;

842 (2) except as otherwise provided in this part, money or other property received from
843 the sale, exchange, liquidation, or change in form of a principal asset;

844 (3) an amount recovered from a third party to reimburse the fiduciary because of a
845 disbursement described in Subsection [22-3-502\(1\)](#) or for another reason to the extent not based
846 on loss of income;

847 (4) proceeds of property taken by eminent domain, except that proceeds awarded for
848 loss of income in an accounting period are income if a current income beneficiary had a
849 mandatory income interest during the period;

850 (5) net income received in an accounting period during which there is no beneficiary to
851 which a fiduciary may or must distribute income; and

852 (6) other receipts as provided in Part 3, Unitrust.

853 Section 21. Section [22-3-405](#) is repealed and reenacted to read:

854 **22-3-405. Receipts not normally apportioned -- Rental property.**

855 (1) To the extent a fiduciary does not account for the management of rental property as
856 a business under Section [22-3-403](#), the fiduciary shall allocate to income an amount received as
857 rent of real or personal property, including an amount received for cancellation or renewal of a
858 lease.

859 (2) An amount received as a refundable deposit, including a security deposit or a
860 deposit that is to be applied as rent for future periods:

861 (a) must be added to principal and held subject to the terms of the lease, except as
862 otherwise provided by law other than this chapter; and

863 (b) is not allocated to income or available for distribution to a beneficiary until the
864 fiduciary's contractual obligations have been satisfied with respect to that amount.

865 Section 22. Section [22-3-406](#) is repealed and reenacted to read:

866 **22-3-406. Receipts not normally apportioned -- Receipt on obligation to be paid in**
867 **money.**

868 (1) This section does not apply to an obligation to which Section [22-3-409](#), [22-3-410](#),
869 [22-3-411](#), [22-3-412](#), [22-3-414](#), [22-3-415](#), or [22-3-416](#) applies.

870 (2) A fiduciary shall allocate to income, without provision for amortization of
871 premium, an amount received as interest on an obligation to pay money to the fiduciary,
872 including an amount received as consideration for prepaying principal.

873 (3) (a) A fiduciary shall allocate to principal an amount received from the sale,
874 redemption, or other disposition of an obligation to pay money to the fiduciary.

875 (b) A fiduciary shall allocate to income the increment in value of a bond or other
876 obligation for the payment of money bearing no stated interest but payable or redeemable, at
877 maturity or another future time, in an amount that exceeds the amount in consideration of
878 which it was issued.

879 Section 23. Section [22-3-407](#) is repealed and reenacted to read:

880 **22-3-407. Receipts not normally apportioned -- Insurance policy or contract.**

881 (1) This section does not apply to a contract to which Section [22-3-409](#) applies.

882 (2) (a) Except as otherwise provided in Subsection (3), a fiduciary shall allocate to
883 principal the proceeds of a life insurance policy or other contract received by the fiduciary as
884 beneficiary, including a contract that insures against damage to, destruction of, or loss of title to
885 an asset.

886 (b) The fiduciary shall allocate dividends on an insurance policy to income to the
887 extent premiums on the policy are paid from income and to principal to the extent premiums on
888 the policy are paid from principal.

889 (3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary
890 against loss of:

891 (a) occupancy or other use by a current income beneficiary;

892 (b) income; or

893 (c) subject to Section [22-3-403](#), profits from a business.

894 Section 24. Section [22-3-408](#) is repealed and reenacted to read:

895 **22-3-408. Receipts normally apportioned -- Insubstantial allocation not required.**

896 (1) If a fiduciary determines that an allocation between income and principal required
897 by Section [22-3-409](#), [22-3-410](#), [22-3-411](#), [22-3-412](#), or [22-3-415](#) is insubstantial, the fiduciary

898 may allocate the entire amount to principal, unless Subsection 22-3-203(5) applies to the
899 allocation.

900 (2) A fiduciary may presume an allocation is insubstantial under Subsection (1) if:

901 (a) the amount of the allocation would increase or decrease net income in an
902 accounting period, as determined before the allocation, by less than 10%; and

903 (b) the asset producing the receipt to be allocated has a fair market value less than 10%
904 of the total fair market value of the assets owned or held by the fiduciary at the beginning of the
905 accounting period.

906 (3) The power to make a determination under Subsection (1) may be:

907 (a) exercised by a co-fiduciary in the manner described in Subsection 22-3-203(6); or

908 (b) released or delegated for a reason described in Subsection 22-3-203(7) and in the
909 manner described in Subsection 22-3-203(8).

910 Section 25. Section 22-3-409 is repealed and reenacted to read:

911 **22-3-409. Receipts normally apportioned -- Deferred compensation, annuity, or**
912 **similar payment.**

913 (1) In this section:

914 (a) "Internal income of a separate fund" means the amount determined under
915 Subsection (2).

916 (b) "Marital trust" means a trust:

917 (i) of which the settlor's surviving spouse is the only current income beneficiary and is
918 entitled to a distribution of all the current net income of the trust; and

919 (ii) that qualifies for a marital deduction with respect to the settlor's estate under
920 Section 2056 of the Internal Revenue Code because:

921 (A) an election to qualify for a marital deduction under Section 2056(b)(7) of the
922 Internal Revenue Code has been made; or

923 (B) the trust qualifies for a marital deduction under Section 2056(b)(5) of the Internal
924 Revenue Code.

925 (c) (i) "Payment" means an amount a fiduciary may receive over a fixed number of

926 years or during the life of one or more individuals because of services rendered or property
927 transferred to the payor in exchange for future amounts the fiduciary may receive.

928 (ii) "Payment" includes an amount received in money or property from the payor's
929 general assets or from a separate fund created by the payor.

930 (d) "Separate fund" includes a private or commercial annuity, an individual retirement
931 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

932 (2) For each accounting period, the following rules apply to a separate fund:

933 (a) the fiduciary shall determine the internal income of the separate fund as if the
934 separate fund were a trust subject to this chapter;

935 (b) if the fiduciary cannot determine the internal income of the separate fund under
936 Subsection (2)(a), the internal income of the separate fund is deemed to equal 3% of the value
937 of the separate fund, according to the most recent statement of value preceding the beginning of
938 the accounting period; and

939 (c) if the fiduciary cannot determine the value of the separate fund under Subsection
940 (2)(b), the value of the separate fund is deemed to equal the present value of the expected
941 future payments, as determined under Section 7520 of the Internal Revenue Code, for the
942 month preceding the beginning of the accounting period for which the computation is made.

943 (3) A fiduciary shall allocate a payment received from a separate fund during an
944 accounting period to income, to the extent of the internal income of the separate fund during
945 the period, and the balance to principal.

946 (4) The fiduciary of a marital trust shall:

947 (a) withdraw from a separate fund the amount the current income beneficiary of the
948 trust requests the fiduciary to withdraw, not greater than the amount by which the internal
949 income of the separate fund during the accounting period exceeds the amount the fiduciary
950 otherwise receives from the separate fund during the period;

951 (b) transfer from principal to income the amount the current income beneficiary
952 requests the fiduciary to transfer, not greater than the amount by which the internal income of
953 the separate fund during the period exceeds the amount the fiduciary receives from the separate

954 fund during the period after the application of Subsection (4)(a); and
955 (c) distribute to the current income beneficiary as income:
956 (i) the amount of the internal income of the separate fund received or withdrawn during
957 the period; and
958 (ii) the amount transferred from principal to income under Subsection (4)(b).
959 (5) For a trust, other than a marital trust, of which one or more current income
960 beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall
961 transfer from principal to income the amount by which the internal income of a separate fund
962 during the accounting period exceeds the amount the fiduciary receives from the separate fund
963 during the period.

964 Section 26. Section [22-3-410](#) is repealed and reenacted to read:

965 **22-3-410. Receipts normally apportioned -- Liquidating asset.**

966 (1) In this section:

967 (a) "Liquidating asset" means an asset whose value will diminish or terminate because
968 the asset is expected to produce receipts for a limited time.

969 (b) "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right
970 to receive payments during a period of more than one year under an arrangement that does not
971 provide for the payment of interest on the unpaid balance.

972 (2) This section does not apply to a receipt subject to Section [22-3-401](#), [22-3-409](#),
973 [22-3-411](#), [22-3-412](#), [22-3-414](#), [22-3-415](#), [22-3-416](#), or [22-3-503](#).

974 (3) A fiduciary shall allocate:

975 (a) to income:

976 (i) a receipt produced by a liquidating asset, to the extent the receipt does not exceed
977 3% of the value of the asset; or

978 (ii) if the fiduciary cannot determine the value of the asset, 10% of the receipt; and

979 (b) to principal, the balance of the receipt.

980 Section 27. Section [22-3-411](#) is repealed and reenacted to read:

981 **22-3-411. Receipts normally apportioned -- Minerals, water, and other natural**

982 **resources.**

983 (1) To the extent a fiduciary does not account for a receipt from an interest in minerals,
984 water, or other natural resources as a business under Section 22-3-403, the fiduciary shall
985 allocate the receipt:

986 (a) to income, to the extent received:

987 (i) as delay rental or annual rent on a lease;

988 (ii) as a factor for interest or the equivalent of interest under an agreement creating a
989 production payment; or

990 (iii) on account of an interest in renewable water;

991 (b) to principal, if received from a production payment, to the extent Subsection
992 (1)(a)(ii) does not apply; or

993 (c) between income and principal equitably, to the extent received:

994 (i) on account of an interest in nonrenewable water;

995 (ii) as a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

996 (iii) from a working interest or any other interest not provided for in Subsection (1)(a)
997 or (b) or Subsection (1)(c)(i) or (ii).

998 (2) This section applies to an interest owned or held by a fiduciary whether or not a
999 settlor was extracting minerals, water, or other natural resources before the fiduciary owned or
1000 held the interest.

1001 (3) An allocation of a receipt under Subsection (1)(c) is presumed to be equitable if the
1002 amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a
1003 deduction for depletion of the interest.

1004 (4) (a) If a fiduciary owns or holds an interest in minerals, water, or other natural
1005 resources before July 1, 2019, the fiduciary may allocate receipts from the interest as provided
1006 in this section or in the manner used by the fiduciary before July 1, 2019.

1007 (b) If the fiduciary acquires an interest in minerals, water, or other natural resources on
1008 or after July 1, 2019, the fiduciary shall allocate receipts from the interest as provided in this
1009 section.

1010 Section 28. Section [22-3-412](#) is repealed and reenacted to read:

1011 **22-3-412. Receipts normally apportioned -- Timber.**

1012 (1) To the extent a fiduciary does not account for receipts from the sale of timber and
1013 related products as a business under Section [22-3-403](#), the fiduciary shall allocate the net
1014 receipts:

1015 (a) to income, to the extent the amount of timber cut from the land does not exceed the
1016 rate of growth of the timber;

1017 (b) to principal, to the extent the amount of timber cut from the land exceeds the rate of
1018 growth of the timber or the net receipts are from the sale of standing timber;

1019 (c) between income and principal if the net receipts are from the lease of land used for
1020 growing and cutting timber or from a contract to cut timber from land, by determining the
1021 amount of timber cut from the land under the lease or contract and applying the rules in
1022 Subsections (1)(a) and (b); or

1023 (d) to principal, to the extent advance payments, bonuses, and other payments are not
1024 allocated under Subsection (1)(a), (b), or (c).

1025 (2) In determining net receipts to be allocated under Subsection (1), a fiduciary shall
1026 deduct and transfer to principal a reasonable amount for depletion.

1027 (3) This section applies to land owned or held by a fiduciary whether or not a settlor
1028 was cutting timber from the land before the fiduciary owned or held the property.

1029 (4) (a) If a fiduciary owns or holds an interest in land used for growing and cutting
1030 timber before July 1, 2019, the fiduciary may allocate net receipts from the sale of timber and
1031 related products as provided in this section or in the manner used by the fiduciary before July 1,
1032 2019.

1033 (b) If the fiduciary acquires an interest in land used for growing and cutting timber on
1034 or after July 1, 2019, the fiduciary shall allocate net receipts from the sale of timber and related
1035 products as provided in this section.

1036 Section 29. Section [22-3-413](#) is repealed and reenacted to read:

1037 **22-3-413. Receipts normally apportioned -- Marital deduction property not**

1038 **productive of income.**

1039 (1) If a trust received property for which a gift or estate tax marital deduction was
1040 allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may
1041 require the trustee, to the extent the trust assets otherwise do not provide the spouse with
1042 sufficient income from or use of the trust assets to qualify for the deduction, to:

1043 (a) make property productive of income;

1044 (b) convert property to property productive of income within a reasonable time; or

1045 (c) exercise the power to adjust under Section [22-3-203](#).

1046 (2) The trustee may decide which action or combination of actions in Subsection (1) to
1047 take.

1048 Section 30. Section [22-3-414](#) is repealed and reenacted to read:

1049 **22-3-414. Receipts normally apportioned -- Derivative or option.**

1050 (1) In this section:

1051 (a) "Derivative" means a contract, instrument, other arrangement, or combination of
1052 contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in
1053 whole or in part, dependent on or derived from an underlying tangible or intangible asset,
1054 group of tangible or intangible assets, index, or occurrence of an event.

1055 (b) "Derivative" includes stocks, fixed income securities, and financial instruments and
1056 arrangements based on indices, commodities, interest rates, weather-related events, and
1057 credit-default events.

1058 (2) To the extent a fiduciary does not account for a transaction in derivatives as a
1059 business under Section [22-3-403](#), the fiduciary shall allocate 10% of receipts from the
1060 transaction and 10% of disbursements made in connection with the transaction to income and
1061 the balance to principal.

1062 (3) Subsection (4) applies if:

1063 (a) a fiduciary:

1064 (i) grants an option to buy property from a trust, whether or not the trust owns the
1065 property when the option is granted;

1066 (ii) grants an option that permits another person to sell property to the trust; or
1067 (iii) acquires an option to buy property for the trust or an option to sell an asset owned
1068 by the trust; and
1069 (b) the fiduciary or other owner of the asset is required to deliver the asset if the option
1070 is exercised.

1071 (4) If this subsection applies, the fiduciary shall allocate 10% to income and the
1072 balance to principal of the following amounts:

- 1073 (a) an amount received for granting the option;
- 1074 (b) an amount paid to acquire the option; and
- 1075 (c) gain or loss realized on the exercise, exchange, settlement, offset, closing, or
1076 expiration of the option.

1077 Section 31. Section [22-3-415](#) is repealed and reenacted to read:

1078 **22-3-415. Receipts normally apportioned -- Asset-backed security.**

1079 (1) Except as otherwise provided in Subsection (2), a fiduciary shall allocate to income
1080 a receipt from or related to an asset-backed security, to the extent the payor identifies the
1081 payment as being from interest or other current return, and to principal the balance of the
1082 receipt.

1083 (2) If a fiduciary receives one or more payments in exchange for part or all of the
1084 fiduciary's interest in an asset-backed security, including a liquidation or redemption of the
1085 fiduciary's interest in the security, the fiduciary shall allocate to income 10% of receipts from
1086 the transaction and 10% of disbursements made in connection with the transaction, and to
1087 principal the balance of the receipts and disbursements.

1088 Section 32. Section [22-3-416](#) is enacted to read:

1089 **22-3-416. Receipts normally apportioned -- Other financial instrument or**
1090 **arrangement.**

1091 (1) A fiduciary shall allocate receipts from or related to a financial instrument or
1092 arrangement not otherwise addressed by this chapter.

1093 (2) The allocation must be consistent with Sections [22-3-414](#) and [22-3-415](#).

1094 Section 33. Section [22-3-501](#) is repealed and reenacted to read:

1095 **Part 5. Allocation of Disbursements**

1096 **22-3-501. Disbursement from income.**

1097 Subject to Section [22-3-504](#), and except as otherwise provided in Subsection

1098 [22-3-601](#)(3)(b) or (c), a fiduciary shall disburse from income:

1099 (1) one-half of:

1100 (a) the regular compensation of the fiduciary and any person providing investment
1101 advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

1102 (b) an expense for an accounting, judicial or nonjudicial proceeding, or other matter
1103 that involves both income and successive interests, to the extent income is sufficient;

1104 (2) the balance of the disbursements described in Subsection (1), to the extent a
1105 fiduciary that is an independent person determines that making those disbursements from
1106 income would be in the interests of the beneficiaries;

1107 (3) another ordinary expense incurred in connection with administration, management,
1108 or preservation of property and distribution of income, including interest, an ordinary repair,
1109 regularly recurring tax assessed against principal, and an expense of an accounting, judicial or
1110 nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent
1111 income is sufficient; and

1112 (4) a premium on insurance covering loss of a principal asset or income from or use of
1113 the asset.

1114 Section 34. Section [22-3-502](#) is repealed and reenacted to read:

1115 **22-3-502. Disbursement from principal.**

1116 (1) Subject to Section [22-3-505](#), and except as otherwise provided in Subsection
1117 [22-3-601](#)(3)(b) or (c), a fiduciary shall disburse from principal:

1118 (a) the balance of the disbursements described in Subsections [22-3-501](#)(1) and (3),
1119 after application of Subsection [22-3-501](#)(2);

1120 (b) the fiduciary's compensation calculated on principal as a fee for acceptance,
1121 distribution, or termination;

- 1122 (c) a payment of an expense to prepare for or execute a sale or other disposition of
1123 property;
- 1124 (d) a payment on the principal of a trust debt;
- 1125 (e) a payment of an expense of an accounting, judicial or nonjudicial proceeding, or
1126 other matter that involves primarily principal, including a proceeding to construe the terms of
1127 the trust or protect property;
- 1128 (f) a payment of a premium for insurance, including title insurance, not described in
1129 Subsection 22-3-501(4), of which the fiduciary is the owner and beneficiary;
- 1130 (g) a payment of an estate or inheritance tax or other tax imposed because of the death
1131 of a decedent, including penalties, apportioned to the trust; and
- 1132 (h) a payment:
- 1133 (i) related to environmental matters, including:
- 1134 (A) reclamation;
- 1135 (B) assessing environmental conditions;
- 1136 (C) remedying and removing environmental contamination;
- 1137 (D) monitoring remedial activities and the release of substances;
- 1138 (E) preventing future releases of substances;
- 1139 (F) collecting amounts from persons liable or potentially liable for the costs of
1140 activities described in Subsections (1)(h)(i)(A) through (E);
- 1141 (G) penalties imposed under environmental laws or regulations;
- 1142 (H) other actions to comply with environmental laws or regulations;
- 1143 (I) statutory or common law claims by third parties; and
- 1144 (J) defending claims based on environmental matters; and
- 1145 (ii) for a premium for insurance for matters described in Subsection (1)(h)(i).
- 1146 (2) If a principal asset is encumbered with an obligation that requires income from the
1147 asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an
1148 amount equal to the income paid to the creditor in reduction of the principal balance of the
1149 obligation.

1150 Section 35. Section [22-3-503](#) is repealed and reenacted to read:

1151 **22-3-503. Transfer from income to principal for depreciation.**

1152 (1) In this section, "depreciation" means a reduction in value due to wear, tear, decay,
1153 corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one
1154 year.

1155 (2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts
1156 from a principal asset that is subject to depreciation, but may not transfer any amount for
1157 depreciation:

1158 (a) of the part of real property used or available for use by a beneficiary as a residence;

1159 (b) of tangible personal property held or made available for the personal use or

1160 enjoyment of a beneficiary; or

1161 (c) under this section, to the extent the fiduciary accounts:

1162 (i) under Section [22-3-410](#) for the asset; or

1163 (ii) under Section [22-3-403](#) for the business or other activity in which the asset is used.

1164 (3) An amount transferred to principal under this section need not be separately held.

1165 Section 36. Section [22-3-504](#) is repealed and reenacted to read:

1166 **22-3-504. Reimbursement of income from principal.**

1167 (1) If a fiduciary makes or expects to make an income disbursement described in
1168 Subsection (2), the fiduciary may transfer an appropriate amount from principal to income in
1169 one or more accounting periods to reimburse income.

1170 (2) To the extent the fiduciary has not been and does not expect to be reimbursed by a
1171 third party, income disbursements to which Subsection (1) applies include:

1172 (a) an amount chargeable to principal but paid from income because principal is
1173 illiquid;

1174 (b) a disbursement made to prepare property for sale, including improvements and
1175 commissions; and

1176 (c) a disbursement described in Subsection [22-3-502](#)(1).

1177 (3) If an asset whose ownership gives rise to an income disbursement becomes subject

1178 to a successive interest after an income interest ends, the fiduciary may continue to make
1179 transfers under Subsection (1).

1180 Section 37. Section 22-3-505 is repealed and reenacted to read:

1181 **22-3-505. Reimbursement of principal from income.**

1182 (1) If a fiduciary makes or expects to make a principal disbursement described in
1183 Subsection (2), the fiduciary may transfer an appropriate amount from income to principal in
1184 one or more accounting periods to reimburse principal or provide a reserve for future principal
1185 disbursements.

1186 (2) To the extent a fiduciary has not been and does not expect to be reimbursed by a
1187 third party, principal disbursements to which Subsection (1) applies include:

1188 (a) an amount chargeable to income but paid from principal because income is not
1189 sufficient;

1190 (b) the cost of an improvement to principal, whether a change to an existing asset or
1191 the construction of a new asset, including a special assessment;

1192 (c) a disbursement made to prepare property for rental, including tenant allowances,
1193 leasehold improvements, and commissions;

1194 (d) a periodic payment on an obligation secured by a principal asset, to the extent the
1195 amount transferred from income to principal for depreciation is less than the periodic payment;
1196 and

1197 (e) a disbursement described in Subsection 22-3-502(1).

1198 (3) If an asset whose ownership gives rise to a principal disbursement becomes subject
1199 to a successive interest after an income interest ends, the fiduciary may continue to make
1200 transfers under Subsection (1).

1201 Section 38. Section 22-3-506 is repealed and reenacted to read:

1202 **22-3-506. Income taxes.**

1203 (1) A tax required to be paid by a fiduciary that is based on receipts allocated to income
1204 must be paid from income.

1205 (2) A tax required to be paid by a fiduciary that is based on receipts allocated to

1206 principal must be paid from principal, even if the tax is called an income tax by the taxing
1207 authority.

1208 (3) Subject to Subsection (4) and Sections 22-3-504, 22-3-505, and 22-3-507, a tax
1209 required to be paid by a fiduciary on a share of an entity's taxable income in an accounting
1210 period must be paid from:

1211 (a) income and principal proportionately to the allocation between income and
1212 principal of receipts from the entity in the period; and

1213 (b) principal to the extent the tax exceeds the receipts from the entity in the period.

1214 (4) After applying Subsections (1) through (3), a fiduciary shall adjust income or
1215 principal receipts, to the extent the taxes the fiduciary pays are reduced because of a deduction
1216 for a payment made to a beneficiary.

1217 Section 39. Section 22-3-507 is enacted to read:

1218 **22-3-507. Adjustment between income and principal because of taxes.**

1219 (1) A fiduciary may make an adjustment between income and principal to offset the
1220 shifting of economic interests or tax benefits between current income beneficiaries and
1221 successor beneficiaries that arises from:

1222 (a) an election or decision the fiduciary makes regarding a tax matter, other than a
1223 decision to claim an income tax deduction to which Subsection (2) applies;

1224 (b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a
1225 transaction involving the fiduciary or a distribution by the fiduciary; or

1226 (c) ownership by the fiduciary of an interest in an entity a part of whose taxable
1227 income, whether or not distributed, is includable in the taxable income of the fiduciary or a
1228 beneficiary.

1229 (2) (a) If the amount of an estate tax marital or charitable deduction is reduced because
1230 a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting
1231 it for estate tax purposes and, as a result, estate taxes paid from principal are increased and
1232 income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge
1233 each beneficiary that benefits from the decrease in income tax to reimburse the principal from

1234 which the increase in estate tax is paid.

1235 (b) The total reimbursement must equal the increase in the estate tax, to the extent the
1236 principal used to pay the increase would have qualified for a marital or charitable deduction but
1237 for the payment.

1238 (c) The share of the reimbursement for each fiduciary or beneficiary whose income
1239 taxes are reduced must be the same as its share of the total decrease in income tax.

1240 (3) A fiduciary that charges a beneficiary under Subsection (2) may offset the charge
1241 by obtaining payment from the beneficiary, withholding an amount from future distributions to
1242 the beneficiary, or adopting another method or combination of methods.

1243 Section 40. Section **22-3-601** is repealed and reenacted to read:

1244 **Part 6. Death of Individual or Termination of Income Interest**

1245 **22-3-601. Determination and distribution of net income.**

1246 (1) This section applies when:

1247 (a) the death of an individual results in the creation of an estate or trust; or

1248 (b) an income interest in a trust terminates, whether the trust continues or is distributed.

1249 (2) A fiduciary of an estate or trust with an income interest that terminates shall:

1250 (a) determine, under Subsection (7) and Part 4, Allocation of Receipts, Part 5,

1251 Allocation of Disbursements, and Part 7, Apportionment at Beginning and End of Income

1252 Interest, the amount of net income and net principal receipts received from property specifically
1253 given to a beneficiary; and

1254 (b) distribute the net income and net principal receipts to the beneficiary that is to
1255 receive the specific property.

1256 (3) A fiduciary shall determine the income and net income of an estate or income
1257 interest in a trust that terminates, other than the amount of net income determined under

1258 Subsection (2), under Part 4, Allocation of Receipts, Part 5, Allocation of Disbursements, and
1259 Part 7, Apportionment at Beginning and End of Income Interest, and by:

1260 (a) including in net income all income from property used or sold to discharge
1261 liabilities;

1262 (b) paying from income or principal, in the fiduciary's discretion, fees of attorneys,
1263 accountants, and fiduciaries, court costs and other expenses of administration, and interest on
1264 estate and inheritance taxes and other taxes imposed because of the decedent's death, but the
1265 fiduciary may pay the expenses from income of property passing to a trust for which the
1266 fiduciary claims a federal estate tax marital or charitable deduction only to the extent:
1267 (i) the payment of the expenses from income will not cause the reduction or loss of the
1268 deduction; or
1269 (ii) the fiduciary makes an adjustment under Subsection [22-3-507\(2\)](#); and
1270 (c) paying from principal other disbursements made or incurred in connection with the
1271 settlement of the estate or the winding up of an income interest that terminates, including:
1272 (i) to the extent authorized by the decedent's will, the terms of the trust, or applicable
1273 law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance
1274 taxes, and other taxes imposed because of the decedent's death; and
1275 (ii) related penalties that are apportioned, by the decedent's will, the terms of the trust,
1276 or applicable law, to the estate or income interest that terminates.
1277 (4) If a decedent's will, the terms of a trust, or applicable law provides for the payment
1278 of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount
1279 outright, the fiduciary shall make the payment from net income determined under Subsection
1280 (3) or from principal to the extent net income is insufficient.
1281 (5) If a beneficiary is to receive a pecuniary amount outright from a trust after an
1282 income interest ends because of an income beneficiary's death, and no payment of interest or
1283 the equivalent of interest is provided for by the terms of the trust or applicable law, the
1284 fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be
1285 entitled under applicable law if the pecuniary amount were required to be paid under a will.
1286 (6) A fiduciary shall distribute net income remaining after payments required by
1287 Subsections (4) and (5) in the manner described in Section [22-3-602](#) to all other beneficiaries,
1288 including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds
1289 an unqualified power to withdraw assets from the trust or other presently exercisable general

1290 power of appointment over the trust.

1291 (7) (a) A fiduciary may not reduce principal or income receipts from property described
1292 in Subsection (2) because of a payment described in Section 22-3-501 or 22-3-502, to the
1293 extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to
1294 make the payment from assets other than the property or to the extent the fiduciary recovers or
1295 expects to recover the payment from a third party.

1296 (b) The net income and principal receipts from the property must be determined by
1297 including the amount the fiduciary receives or pays regarding the property, whether the amount
1298 accrued or became due before, on, or after the date of the decedent's death or an income
1299 interest's terminating event, and making a reasonable provision for an amount the estate or
1300 income interest may become obligated to pay after the property is distributed.

1301 Section 41. Section 22-3-602 is repealed and reenacted to read:

1302 **22-3-602. Distribution to successor beneficiary.**

1303 (1) (a) Except to the extent Part 3, Unitrust, applies for a beneficiary that is a trust, each
1304 beneficiary described in Subsection 22-3-601(6) is entitled to receive a share of the net income
1305 equal to the beneficiary's fractional interest in undistributed principal assets, using values as of
1306 the distribution date.

1307 (b) If a fiduciary makes more than one distribution of assets to beneficiaries to which
1308 this section applies, each beneficiary, including a beneficiary that does not receive part of the
1309 distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary
1310 received after the decedent's death, an income interest's other terminating event, or the
1311 preceding distribution by the fiduciary.

1312 (2) In determining a beneficiary's share of net income under Subsection (1), the
1313 following rules apply:

1314 (a) The beneficiary is entitled to receive a share of the net income equal to the
1315 beneficiary's fractional interest in the undistributed principal assets immediately before the
1316 distribution date.

1317 (b) The beneficiary's fractional interest under Subsection (2)(a) must be calculated:

1318 (i) on the aggregate value of the assets as of the distribution date without reducing the
1319 value by any unpaid principal obligation; and

1320 (ii) without regard to:

1321 (A) property specifically given to a beneficiary under the decedent's will or the terms of
1322 the trust; and

1323 (B) property required to pay pecuniary amounts not in trust.

1324 (c) The distribution date under Subsection (2)(a) may be the date as of which the
1325 fiduciary calculates the value of the assets if that date is reasonably near the date on which the
1326 assets are distributed.

1327 (3) To the extent a fiduciary does not distribute under this section all the collected but
1328 undistributed net income to each beneficiary as of a distribution date, the fiduciary shall
1329 maintain records showing the interest of each beneficiary in the net income.

1330 (4) If this section applies to income from an asset, a fiduciary may apply the rules in
1331 this section to net gain or loss realized from the disposition of the asset after the decedent's
1332 death, an income interest's terminating event, or the preceding distribution by the fiduciary.

1333 Section 42. Section **22-3-701** is enacted to read:

1334 **Part 7. Apportionment at Beginning and End of Income Interest**

1335 **22-3-701. When right to income begins and ends.**

1336 (1) (a) An income beneficiary is entitled to net income in accordance with the terms of
1337 the trust from the date an income interest begins.

1338 (b) The income interest begins on the date specified in the terms of the trust or, if no
1339 date is specified, on the date an asset becomes subject to:

1340 (i) the trust for the current income beneficiary; or

1341 (ii) a successive interest for a successor beneficiary.

1342 (2) An asset becomes subject to a trust under Subsection (1)(b)(i):

1343 (a) for an asset that is transferred to the trust during the settlor's life, on the date the
1344 asset is transferred;

1345 (b) for an asset that becomes subject to the trust because of a decedent's death, on the

1346 date of the decedent's death, even if there is an intervening period of administration of the
1347 decedent's estate; or

1348 (c) for an asset that is transferred to a fiduciary by a third party because of a decedent's
1349 death, on the date of the decedent's death.

1350 (3) An asset becomes subject to a successive interest under Subsection (1)(b)(ii) on the
1351 day after the preceding income interest ends, as determined under Subsection (4), even if there
1352 is an intervening period of administration to wind up the preceding income interest.

1353 (4) An income interest ends on the day before an income beneficiary dies or another
1354 terminating event occurs or on the last day of a period during which there is no beneficiary to
1355 which a fiduciary may or must distribute income.

1356 Section 43. Section **22-3-702** is enacted to read:

1357 **22-3-702. Apportionment of receipts and disbursements when decedent dies or**
1358 **income interest begins.**

1359 (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to
1360 which Subsection [22-3-601\(2\)](#) applies, to principal if its due date occurs before the date on
1361 which:

1362 (a) for an estate, the decedent died; or

1363 (b) for a trust or successive interest, an income interest begins.

1364 (2) If the due date of a periodic income receipt or disbursement occurs on or after the
1365 date on which a decedent died or an income interest begins, a fiduciary shall allocate the
1366 receipt or disbursement to income.

1367 (3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary
1368 shall:

1369 (a) treat the receipt or disbursement under this section as accruing from day to day; and

1370 (b) allocate to principal the portion of the receipt or disbursement accruing before the
1371 date on which a decedent died or an income interest begins, and to income the balance.

1372 (4) A receipt or disbursement is periodic under Subsections (2) and (3) if:

1373 (a) the receipt or disbursement must be paid at regular intervals under an obligation to

1374 make payments; or

1375 (b) the payor customarily makes payments at regular intervals.

1376 (5) (a) An item of income or obligation is due under this section on the date the payor
1377 is required to make a payment.

1378 (b) If a payment date is not stated, there is no due date.

1379 (6) Distributions to shareholders or other owners from an entity to which Section
1380 22-3-401 applies are due:

1381 (a) on the date fixed by or on behalf of the entity for determining the persons entitled to
1382 receive the distribution;

1383 (b) if no date is fixed, on the date of the decision by or on behalf of the entity to make
1384 the distribution; or

1385 (c) if no date is fixed and the fiduciary does not know the date of the decision by or on
1386 behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

1387 Section 44. Section **22-3-703** is enacted to read:

1388 **22-3-703. Apportionment when income interest ends.**

1389 (1) In this section:

1390 (a) "Undistributed income" means net income received on or before the date on which
1391 an income interest ends.

1392 (b) "Undistributed income" does not include an item of income or expense which is
1393 due or accrued or net income that has been added or is required to be added to principal under
1394 the terms of the trust.

1395 (2) Except as otherwise provided in Subsection (3), when a mandatory income interest
1396 of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income
1397 that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does
1398 not survive the date the interest ends, to the beneficiary's estate.

1399 (3) If a beneficiary has an unqualified power to withdraw more than 5% of the value of
1400 a trust immediately before an income interest ends:

1401 (a) the fiduciary shall allocate to principal the undistributed income from the portion of

1402 the trust which may be withdrawn; and

1403 (b) Subsection (2) applies only to the balance of the undistributed income.

1404 (4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value
1405 of assets ends, the fiduciary shall prorate the final payment as required to preserve an income
1406 tax, gift tax, estate tax, or other tax benefit.

1407 Section 45. Section **22-3-801** is enacted to read:

1408 **Part 8. Miscellaneous Provisions**

1409 **22-3-801. Uniformity of application and construction.**

1410 In applying and construing this uniform act, consideration must be given to the need to
1411 promote uniformity of the law with respect to its subject matter among states that enact it.

1412 Section 46. Section **22-3-802** is enacted to read:

1413 **22-3-802. Relation to Electronic Signatures in Global and National Commerce**
1414 **Act.**

1415 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
1416 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
1417 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
1418 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

1419 Section 47. Section **22-3-803** is enacted to read:

1420 **22-3-803. Application to trust or estate.**

1421 This chapter applies to a trust or estate existing or created on or after July 1, 2019,
1422 except as otherwise expressly provided in the terms of the trust or this chapter.

1423 Section 48. Section **22-3-804** is enacted to read:

1424 **22-3-804. Severability.**

1425 If any provision of this chapter or its application to any person or circumstance is held
1426 invalid, the invalidity does not affect other provisions or applications of this chapter which can
1427 be given effect without the invalid provision or application, and to this end the provisions of
1428 this chapter are severable.

1429 Section 49. Section **75-7-103** is amended to read:

1430 **75-7-103. Definitions.**

1431 (1) In this chapter:

1432 (a) "Action," with respect to an act of a trustee, includes a failure to act.

1433 (b) "Beneficiary" means a person that:

1434 (i) has a present or future beneficial interest in a trust, vested or contingent; or

1435 (ii) in a capacity other than that of trustee, holds a power of appointment over trust

1436 property.

1437 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable

1438 purpose described in Subsection [75-7-405\(1\)](#).

1439 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or

1440 ordinance relating to protection of the environment.

1441 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms

1442 of the trust.

1443 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.

1444 (g) "Power of withdrawal" means a presently exercisable general power of appointment

1445 other than a power exercisable only upon consent of the trustee or a person holding an adverse

1446 interest.

1447 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's

1448 qualification is determined:

1449 (i) is a current distributee or permissible distributee of trust income or principal; or

1450 (ii) would be a distributee or permissible distributee of trust income or principal if the

1451 trust terminated on that date.

1452 (i) "Resident estate" or "resident trust" means:

1453 (i) an estate of a decedent who at death was domiciled in this state;

1454 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a

1455 decedent who at his death was domiciled in this state; or

1456 (iii) a trust administered in this state.

1457 (j) "Revocable," as applied to a trust, means revocable by the settlor without the

1458 consent of the trustee or a person holding an adverse interest.

1459 (k) "Settlor" means a person, including a testator, who creates, or contributes property
 1460 to, a trust. If more than one person creates or contributes property to a trust, each person is a
 1461 settlor of the portion of the trust property attributable to that person's contribution except to the
 1462 extent another person has the power to revoke or withdraw that portion.

1463 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and
 1464 involuntary transfer or encumbrance of a beneficiary's interest.

1465 (m) "Terms of a trust" means:

1466 (i) except as otherwise provided in Subsection (1)(m)(ii), the manifestation of the
 1467 settlor's intent regarding a trust's provisions as:

1468 (A) expressed in the trust instrument; or [~~as may be~~]

1469 (B) established by other evidence that would be admissible in a judicial proceeding[-];

1470 (ii) the trust's provisions as established, determined, or amended by:

1471 (A) a trustee or trust director in accordance with the applicable law;

1472 (B) court order; or

1473 (C) a nonjudicial settlement agreement under Section [75-7-110](#);

1474 (iii) for an estate, a will; or

1475 (iv) for a life estate or term interest, the corresponding manifestation of the rights of the
 1476 beneficiaries.

1477 (n) "Trust instrument" means an instrument executed by the settlor that contains terms
 1478 of the trust, including any amendments thereto.

1479 (2) Terms not specifically defined in this section have the meanings provided in
 1480 Section [75-1-201](#).

1481 Section 50. **Repealer.**

1482 This bill repeals:

1483 Section [22-3-105](#), **Judicial control of discretionary power.**

1484 Section [22-3-106](#), **Adjustments.**

1485 Section [22-3-107](#), **Notice of proposed action -- Objections by beneficiary -- Liability**

1486 **of trustee -- Proceedings.**

1487 Section **22-3-603**, **Application of chapter to existing trusts and estates.**

1488 Section **22-3-604**, **Transitional provisions.**

1489 Section **22-7-101**, **Title.**

1490 Section **22-7-102**, **Definitions.**

1491 Section **22-7-103**, **Trustee powers to convert trusts -- Requirements to make**

1492 **unitrust election.**

1493 Section **22-7-104**, **Trustee powers to convert trusts where there is no trustee other**

1494 **than an interested trustee -- Requirements to make unitrust election.**

1495 Section **22-7-105**, **Unitrust election by beneficiary -- Ability to request trustee**

1496 **action.**

1497 Section **22-7-106**, **Settlor created unitrust.**

1498 Section **22-7-107**, **Valuations.**

1499 Section **22-7-108**, **Unitrust percentages.**

1500 Section **22-7-109**, **Treatment and allocation of income.**

1501 Section **22-7-110**, **Administration.**

1502 Section **22-7-111**, **Treatment of underpayments or overpayments.**

1503 Section **22-7-112**, **Effect of conversion or reconversion on governing instrument.**

1504 Section **22-7-113**, **Situs.**

1505 Section **22-7-114**, **Trustee's liability.**

1506 Section **22-7-115**, **Judicial control of discretionary powers.**

1507 Section **22-7-116**, **Limitation of election.**

1508 Section **22-7-117**, **Application.**

1509 Section **22-7-118**, **Trusts for which a marital deduction under the tax code has**

1510 **been taken -- Trusts for which the generation-skipping transfer tax does not apply.**

1511 Section 51. **Effective date.**

1512 This bill takes effect on July 1, 2020.